IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1124 OF 1994

Shri madhukar Ramchandra Kadu, aged 54, business, r/o. Indira Nagar, Opp: Indian Oil Bus Stop, Vinayak Pan Bidi Shop, Bombay - 58. .. Petitioner

Vs.

Shri Ahmed Ibrahim Khatib, aged 50, Cycle Repairer, r/o.Shriwardhan, District-Raigad. .. Respondent

--

None present for the parties.

--

CORAM : R.M.S.KHANDEPARKAR, J

DATED : 14TH NOVEMBER, 2005.

ORAL JUDGMENT :

1. None present. Perused the records.

2. The petitioner challenges the order passed by the lower appellate Court setting aside the judgment passed by the trial Court on the point of order of eviction against the respondent on the ground of bonafide need of the premises to the petitioner.

3. The petitioner filed a suit for eviction of

the respondent from the shop premises situated in the house of the petitioner which exists at Shriwardhan. The suit for eviction was filed on two grounds viz. bonafide requirement of the petitioner and secondly for carrying out permanent structural additions to the suit premises. The trial Court decreed the suit by its order dated 18th January, 1991 on the ground of bonafide need of the premises for the petitioner while rejecting the plaint for eviction of the respondent on the ground of carrying out permanent structural additions and alterations. The matter was carried in appeal by the respondent by filing Civil Appeal No.18 of 1991 before the District Court at Raigad. The lower appellate Court by the impugned order dated 19th January, 1994 allowed the appeal and set aside the decree passed by the trial Court. Hence, the present petition under Article 227 of the Constitution of India.

4. Perusal of the judgment passed by the trial Court discloses that the eviction of the respondent was ordered on the ground that on retirement of the petitioner, he wanted to spend his remaining life along with other family members at Shriwardhan, and therefore, the premises were necessary for carrying out business by the petitioner. The lower appellate

Court, on detail analysis on the basis of evidence on record, has held that apart from a mere desire to start stationery shop in the suit premises, there is no other evidence regarding bonafide need of the suit premises for the petitioner to carry out structural additions and alterations. It has been also held that the suit premises is a small shop wherein the respondent has his business of bicycle. It has also been further held that the suit premises form part of sufficient big house and apart from the suit premises, the entire house is in occupation of the petitioner and it is not let out to any other person. In those circumstances, the lower appellate Court has held that the bonafide need of the premises for the purpose of business by the petitioner has not been established apart from the fact that no material as regards the need of such premises has been placed on record and it is merely a desire of the petitioner that had expressed.

5. The challenge to the order merely relates to the appreciation of evidence by the lower appellate Court. It is to be noted that the Court of Appeal is also a Court of facts and merely because the lower appellate Court has re-assessed the entire evidence on record, no fault can be found with such procedure

adopted by the lower appellate Court. On the contrary, re-assessment of the evidence has revealed that the petitioner had failed to establish the bonafide need of the premises for his business, besides, such finding nowhere discloses any sort of perversity nor the same reveals to be contrary to the material on record. In the absence of any illegality in exercise of jurisdiction, there would not be any justification for interference in writ jurisdiction under Article 227 of the Constitution. The lower appellate Court on detail analysis has arrived at the correct finding regarding the bonafide need of the suit premises, and therefore, it does not warrant interference. The petition, therefore, fails and is dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

(R.M.S.KHANDEPARKAR, J)